

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

GABRIELLA KERTESZ,  
pro se and all other similarly situated  
citizens,

Plaintiff,

v.

BOB FERGUSON,

Defendant.

NO. 2:20-CV-00372-RAJ-BAT

**DEFENDANT’S RESPONSE TO  
PLAINTIFF’S OBJECTION TO REPORT  
AND RECOMMENDATION**

Defendant, BOB FERGUSON, respectfully submits the following Response to the Plaintiff’s Objection to the Report and Recommendation.

**I. AUTHORITY AND ARGUMENT**

**A. The Report and Recommendation Correctly Concluded Plaintiff Lacks Standing and Defendant is Not a Person Under 42 U.S.C. § 1983**

Plaintiff’s Objection claims that sections A, B, and C of the Report and Recommendation “lack any standing, as they do not address the substantive truth of Ms. Kertesz’s claim.” Plaintiff’s Objection to Judge Tsuchida’s Report (Objection) at 2, Dkt. No. 18. Plaintiff asserts these sections appear “to be the creation of an air of legitimacy for an unlawful dismissal.” *Id.*

The Report and Recommendation correctly concluded that Plaintiff lacks standing to bring suit on behalf of others, Plaintiff lacks Article III standing, and Attorney General Ferguson is not a “person” for purposes of 42 U.S.C. § 1983. Report and Recommendation,

at 4–5, 7, Dkt. No. 16. Nothing in the Report and Recommendation indicates that it is falsely contrived to support an unlawful dismissal, as Plaintiff claims. Instead, the analysis contained in the Report and Recommendation is based on sound legal principles, with references to factual and legal authority. These principles support dismissal of Plaintiff’s claims.

**B. The Report and Recommendation Correctly Concluded That Plaintiff Has Failed to Establish Any Factual Basis for a Violation of 42 U.S.C. § 1983 or the Equal Protection Clause of the Fourteenth Amendment**

Plaintiff’s Objection asserts the Report and Recommendation misinterprets RCW 7.70.060. Objection at 2, Dkt. No. 18. Plaintiff takes issue with the Report and Recommendation labeling Chapter 7.70 RCW a “statutory scheme,” asserting that “[t]he consequences of such ‘statutory scheming’ are disastrous for the welfare of the public.” *Id.*

Contrary to Plaintiff’s arguments, the Report and Recommendation does not reveal any manipulation by the government or by Attorney General Ferguson to deprive patients of their rights. The Report and Recommendation places RCW 7.70.060 in context within Chapter 7.70 RCW as a whole. Report and Recommendation at 2, 7, Dkt. No. 16. The Report and Recommendation correctly interpreted the language of RCW 7.70.060 and the context of RCW 7.70.060. *Id.* at 8–10. Based on that interpretation, the Report and Recommendation correctly concluded that Plaintiff had not alleged a factual basis on which the Court could conclude that Attorney General Ferguson acted under color of state law to deprive Plaintiff of her rights, or that Attorney General Ferguson is authorized to enforce RCW 7.70.060. *Id.* at 8–9.

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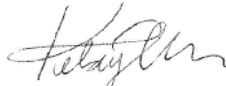
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**II. CONCLUSION AND RELIEF REQUESTED**

The Report and Recommendation correctly concluded that Defendant's Motion to Dismiss Under Rule 12(b)(1), (6), Dkt. No.13, should be granted, and Plaintiff's claims should be dismissed with prejudice without leave to amend. The Defendant asks this Court to adopt the Report and Recommendation, grant the Motion to Dismiss, and dismiss with prejudice Plaintiff's claims.

DATED this 1st day of June, 2020.

ROBERT W. FERGUSON  
Attorney General



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KELSEY L. MARTIN, WSBA No. 50296  
Assistant Attorney General  
Agriculture and Health Division  
Attorneys for Defendant Bob Ferguson  
360-586-6470

**CERTIFICATE OF SERVICE**


I hereby certify that on June 1, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

UNITED STATES WESTERN DISTRICT COURT CLERK  
SEATTLE, WA

GABRIELLA KERTESZ  
9702 1ST AVE NW  
SEATTLE, WA 98117

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 1st day of June, 2020, at Tumwater, WA.

  
JESSICA MAY  
Legal Assistant